

NOT FOR PUBLICATION

(Docket No. 444)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CAMDEN VICINAGE**

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COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

v.

EQUITY FINANCIAL GROUP,  
et al.,

Defendants.

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Civil No. 04-1512 (RBK)

**OPINION**

**KUGLER**, United States District Judge:

Before the Court is a motion by Stephen T. Bobo, the Equity Receiver of Defendants Equity Financial Group, LLC, Tech Traders, Inc., Robert W. Shimer and others (the "Receiver") to disallow certain claims by certain Tier 3 investors in Universe Capital Appreciation, LLC ("Universe"), itself a Tier 2 investor. This motion is unopposed. For the reasons provided below, the Receiver's motion will be granted.

**I. Background**

The Court set forth the background of this case repeatedly in prior Opinions, and need not do so here. See Commodity Futures Trading Comm'n v. Equity Fin. Group, No. 04-1512, 2006 WL 3359418 (D.N.J. Nov. 16, 2006); see also Commodity Futures Trading Comm'n v. Equity Fin. Group, No. 04-1512, 2005 WL 2864784

(D.N.J. Oct. 4, 2005). On April 1, 2004, the Commodity Futures Trading Commission ("CFTC") filed a complaint in this Court against Defendants Equity Financial Group, LLC; Tech Traders, Inc.; Vincent J. Firth; Robert W. Shimer; J. Vernon Abernethy; Coyt E. Murray; Magnum Capital Investments, Ltd.; Magnum Investment, Ltd.; and Tech Traders, Ltd.

On April 1, 2004, this Court entered an Order appointing the Receiver for the purpose of "marshalling, preserving, accounting for and liquidating the assets that are subject to this Order and directing, monitoring and supervising Defendants' activities. . . ." On September 26, 2005, this Court approved an interim distribution of funds, which uses a tiered system to ensure equitable distribution. Under this system, Tier I investors, who invested directly with Tech Traders, receive a percentage of their investment based on a plan that accounts for prior withdrawals. A Tier II investor receives distributions based on the amount distributed to that investor's Tier I investor. The system permits Tier I investors to keep funds they previously received, but those previous withdrawals will be credited against the Tier I investor's pro rata share, which is based on the full amount invested.

## **II. Kaivalya Holding Group, Inc.**

Before forming Equity Financial Group, LLC, Robert Shimer, with the assistance of business associates David Perkins and William Pfalz, formed Kaivalya as an investment opportunity for

family and friends. (Shimer Dep. at 43, 49-50.) Through Kaivalya, Shimer and Perkins pooled investor funds they intended, in part, for trading with Coyt Murray. (Id. at 137.) However, the Kaivalya funds intended for Murray never reached Murray, and an intermediary responsible for transferring the funds allegedly took the money. (Perkins Dep. at 115-17.)

As a result of the alleged improper diversion of funds, Shimer diverted approximately \$1.3 million in Tech Trader investor funds to Kaivalya. (Shimer Dep. at 1082-83.) However, Tech Traders received no value for the funds transferred to Kaivalya. (Shimer Dep. 288-290.) Upon receipt of the money from Tech Traders, Kaivalya disbursed principle repayment to seven investors, including Robert Cooper,<sup>1</sup> Amanda Graves,<sup>2</sup> Cory Gubler,<sup>3</sup> Harry Schmalz,<sup>4</sup> the George Shimer Trust,<sup>5</sup> Trinidad,<sup>6</sup> and Harland

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<sup>1</sup> The record reflects that between October 24, 2002 and June 18, 2003, Robert Cooper received five checks from Kaivalya, totaling \$35,000. In the memo line of two of these checks, it states the check is for "partial repayment." On another check, the memo line reflects "principle repay (partial)." (Bobo Aff. Ex. K.)

<sup>2</sup> The record reflects that Kaivalya issued a check to Amanda Graves on October 17, 2003 in the amount of \$25,000. In the "memo" line of the check, it states it is for "partial repay." (Id.)

<sup>3</sup> Cory Gubler received a check from Kaivalya dated November 17, 2003 for \$15,000. The memo line of this check states it is for "partial prin repay." (Id.)

<sup>4</sup> Harry Schmalz received a check from Kaivalya dated March 18, 2004, in the amount of \$20,000. (Id.)

<sup>5</sup> On November 16, 2003, Kaivalya issued a check to AT&T Universal Card in the amount of \$22,000. In the memo line of the

and Donna Wedel.<sup>7</sup>

Moreover, the Receiver states that these seven investors invested funds with Universe, and participated in the Universe investor claim process. As a result, these investors received the notice of motion to distribute receivership funds to Universe investors, which amounted to 28.5% of the total amount invested with Universe, to which none of these investors objected.

In light of these investors' previous withdrawals from Kaivalya, which originated from Tech Traders, as well as the 28.5% distribution of their investment with Universe, the Receiver proposes that the Court permit the Receiver to reduce these investors's claims by the amount the investors previously received from Kaivalya and Universe. The Receiver proposes the following treatment of these seven investors' claims:

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check, it states the check is for George Shimer, and lists a sixteen digit credit card number, presumably belonging to George Shimer. (Id.)

<sup>6</sup> The record reflects a wire transfer from Kaivalya to Trinidad, dated December 18, 2003, in the amount of \$50,000. (Id.)

<sup>7</sup> Kaivalya issued a check, dated November 11, 2003, to Harland and Donna Wedel. In the memo line of this check, it states the check is for "partial prin repay." (Id.)

Claimant	Total Funds Invested	28.5% of Total Funds Invested	Previous Withdrawals	28.5% of Total Funds Invested Less Previous Withdrawals	Tech Traders' Funds Received from Kaivalya	Receiver's Proposed Treatment (28.5% Total Funds Invested Less Withdrawals, Including Tech Traders' Funds Received from Kaivalya)
Robert Cooper	\$50,000	\$14,250	\$24,000	\$0	\$35,000	\$0
Amanda Graves	\$100,000	\$28,500	\$0	\$28,500	\$25,000	\$3,500
Cory Gubler	\$175,000	\$49,875	\$175,000	\$0	\$15,000	\$0
Harry Schmalz	\$140,000	\$39,900	\$0	\$39,900	\$20,000	\$19,900
The George Shimer Trust	\$35,000	\$9,975	\$54,834	\$0	\$22,000	\$0
Trinidad/Vico/Pinnacle <sup>8</sup>	\$199,200	\$56,772	\$108,100	\$0	\$50,000	\$0
Harland and Donna Wedel	\$65,800	\$18,753	\$8,000	\$10,753	\$30,000	\$0
TOTALS				\$79,153		\$23,400

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<sup>8</sup> This Court entered an Order on December 18, 2006, granting the Receiver authority to aggregate Trinidad's claims with the claims of Vico, Inc. and Pinnacle.

Finally, the Receiver recommends that the Court permit Tech Traders to recover the value of its previous payments to these seven investors by transferring the remaining amount (\$55,753) from the Shasta general account to the Tech Traders general account (i.e., \$79,153 less \$23,400).

#### **VI. Conclusion**

Because the Receiver provided ample evidence to support his recommendations, the Court grants the Receiver's motion to adopt the proposed treatment of the claims by investors Robert Cooper, Amanda Graves, Cory Gubler, Harry Schmalz, The George Shimer Trust, Trinidad/Vico/Pinnacle, and Harland and Donna Wedel.

Dated: 3/26/2007

s/Robert B. Kugler  
ROBERT B. KUGLER  
United States District Judge